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February 5, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 18, 2007

Case Number: TSO-0548

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") for access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual is eligible for access authorization. As discussed below, I find that the individual's suspended access authorization should not be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a Notification Letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a statement of the derogatory information causing the security concern.

The security concern cited in the Letter involves the individual's use of alcohol. The Notification Letter stated that the individual has been diagnosed by a DOE consultant psychologist as suffering

1/ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

from alcohol dependence. The Notification Letter also indicated that from early 2006 to March 2007, he drank heavily, 4 to 12 beers almost every night and, in some instances 24 beers on a weekend day.

The Letter also indicated that on March 8, 2007, the individual reported to his supervisor that he had been drinking too much beer.

The Letter further stated that from March 11 through March 14, 2007, the individual received treatment at an in-patient alcohol detoxification program. According to the Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J). ²

The DOE consultant psychologist evaluated the individual on April 27, 2007. In his report, the DOE consultant psychologist diagnosed the individual as suffering from alcohol dependence. The consultant psychologist further indicated that the individual reported that he had been abstinent from alcohol since March 10, 2007.

In the report, the DOE consultant psychologist indicated that in order to establish rehabilitation, the individual should demonstrate monitored and sustained interventions which include use of Alcoholics Anonymous (AA) with a sponsor, occasional monitoring by the psychologist at the DOE site where the individual is employed ("site psychologist"), and participation in an aftercare program as recommended by the detoxification program that he previously attended. The consultant psychologist recommended that the length of time required for the individual to establish rehabilitation is at least 12 months of monitored recovery time. "If he were to attempt recovery without use of these supports [he] should be held to a standard of a minimum of two years of total abstinence, with random alcohol testing." He concluded that the two-months of recovery time that the individual had reported as of the time of the evaluation could not be considered adequate, "given the inherent vulnerability to relapse of alcohol dependence."

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded to the Office

2/ Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on his own behalf, and presented the testimony of his mother, his AA sponsor, two friends, a recent supervisor, his alcohol therapist, and the site psychologist. The DOE Counsel presented the testimony of the DOE consultant psychologist.

II. Hearing Testimony

At the outset, the individual's attorney stipulated to the diagnosis of the DOE consultant psychologist that the individual suffered from alcohol dependence. See Transcript (hereinafter Tr.) at 5. Accordingly, the focus of the hearing was on the steps that the individual has taken towards reformation and rehabilitation. The witnesses' testimony was directed towards those matters.

A. The Individual

The individual agreed with the diagnosis of the DOE consultant psychologist that he is "an alcoholic." Tr. at 101. He stated that his 2006-2007 excessive drinking episode was triggered by an attempt to give up nicotine in the form of chewing tobacco. Tr. at 115-116. He stated that his last alcohol use was on March 10, 2007. He has had significant therapy through an eight-week course of intensive out-patient treatment, therapy sessions with an alcohol counselor, and attendance at AA meetings three times a week since March 10. He has had a sponsor for a number of months, and has completed nine of the AA twelve steps. He is providing AA service by chairing meetings. Tr. at 103, 105-06, 127, 155, 157. He confirmed that it is his intention never to use alcohol again. Tr. at 110. He plans to continue with AA and his meetings with his alcohol therapist. Tr. at 106, 117. He indicated he has people to talk to regarding his alcohol use, including his AA sponsor, his alcohol therapist and a supportive family. Tr. at 111. He stated that if he has an urge to use alcohol again, he will turn to his support system, and use the stress management techniques he has discussed with his therapist. These include exercise, reading and AA meetings. Tr. at 114, 108, 156, 157.

B. The Individual's Mother

The individual's mother testified that she dates the individual's abstinence from March 2007. Tr. at 80. Since that time, she has seen no evidence of alcohol in the individual's home. She believes that if he were to resume alcohol use, she would, as a mother, notice even small changes in his behavior. Tr at 81. She believes he is truly committed to abstinence and the principles of AA and that his work with his therapist has helped him. Tr. at 71, 73, 78, 80. If she believed that he had the urge to use alcohol, she would offer him assistance in any way she could and urge him to seek help immediately. Tr. at 72.

C. AA Sponsor

The individual's AA sponsor testified that he has been mentoring the individual for "several months." Tr. at 91. He stated the individual is a serious participant in AA and is committed to working through the program and to remaining abstinent. Tr. at 86-87. He sees the individual at least once a week at meetings and once a week as his sponsor. Tr. at 97. The sponsor believes that the individual regularly attends AA meetings several times a week. Tr. at 88-89, 97, 98. The sponsor rates the individual as an "8" for his commitment and gives the individual the highest rating of the three "sponsees" that he is working with currently. Tr. at 93, 96. He enumerated several signs that an AA attendee might be having a relapse: cease attending AA meetings; spend time in bars; and stop calling his sponsor. The individual has exhibited none of these behaviors. Tr. at 95.

D. Former Supervisor and Two Friends

The individual's former supervisor (now retired) testified that she was the supervisor of the individual's work group since 2006, and that he was an excellent employee. Tr. at 49, 50. She indicated that, while she was his supervisor, she talked to him daily. Since retiring, she has seen him only every two or three months. She has never seen him use alcohol. Tr. at 49, 56. The former supervisor stated that the individual revealed to her on his own volition that he was experiencing an alcohol problem, and she recommended that he seek the help of the site psychologist. Tr. at 51, 52. It was her recollection that the individual told her that he had not used alcohol since approximately February or March 2007, and that he was committed to no further use of alcohol. Tr. at 54.

Friend #1 is a lifelong friend of the individual. They see each other about once a week, and sometimes more frequently. Tr. at 59, 64. Recently, he has not seen any signs of alcohol use at the individual's home, even when he has visited unannounced. Tr. at 66.

The individual has told him about his alcohol problems, his involvement with AA, and his commitment to abstinence. Tr. at 60. He believes that the individual stopped using alcohol "about a year ago." Tr. at 61.

Friend #2

This witness has known the individual since 1997, and works at the same site as the individual. Tr. at 36. He lives with the individual four days a week. Because his own residence is 75 miles from their work site, this arrangement saves him a long commute. This practice has been going on for 10 years. Tr. at 37. The witness stated that the individual has told him of his intention never to use alcohol again, and the last time he saw the individual use alcohol was about a year ago or a little bit less than a year ago. Tr. at 38, 44. He confirmed that he noticed a "spike" in the individual's alcohol use at the time he was trying to give up nicotine. Tr. at 42. The witness stated that the individual had mentioned to him that he was participating in AA. Tr. at 45. He indicated that if he thought the individual were about to use alcohol again, he would try to talk to him about it and "divert him." Tr. at 47.

E. The Alcohol Therapist

This witness is a licensed clinical social worker with a specialty in alcohol and drug counseling. Tr. at 9. She has diagnosed the individual as alcohol dependent. Tr. at 20. She has been treating the individual since August 2007, and, as of the date of the hearing, had seven sessions with him. Tr. at 10. She believes that his overall rehabilitation program, including AA and therapy sessions, is a strong one, and that he needs to continue to work on his stress management and attention deficit disorder. Tr. at 21. She is persuaded that he is committed to abstinence and that his risk of relapse is low. Tr. at 23, 32. The alcohol therapist indicated at first that there is adequate evidence of rehabilitation and reformation, even though he has not yet achieved a full year of abstinence, as recommended by the DOE consultant psychologist. Tr. at 30. In this regard, she cited her belief that the individual is no longer using alcohol, is going to AA meetings, working with his sponsor, attending church group meetings, and shows self motivation. She nevertheless believed

that a full year of abstinence would provide "more confidence," and that there is "significance" to the one-year abstinence mark. Tr. at 30-31. Later in her testimony, she stated that she considered the individual as "rehabilitating," rather than "rehabilitated." Tr. at 33. She also testified that she did not disagree with the one-year abstinence period recommended by the DOE consultant psychologist. Tr. at 34.

F. The Site Psychologist

The site psychologist is employed at the installation where the individual works. His responsibilities include fitness for duty assessments, and also ensuring that employees receive appropriate treatment for their mental conditions requiring care. Tr. at 128-29. He indicated that he has been working with the individual since approximately March 2007. He has a positive prognosis for the individual and believes his recovery process to be "very genuine." Tr. at 131, 140. He stated that the individual is "exactly where I would want him to be," and is strongly committed to his abstinence program. Tr. at 134. However, the site psychologist believed that the one-year abstinence period is the minimum necessary. He indicated that the one-year minimum is crucial, so that the evaluating professional is not influenced by inappropriate subjective factors. Tr. at 134-135.

G. The DOE Consultant Psychologist

The DOE consultant psychologist testified that the individual's recovery program was a sound one, but maintained that the minimum recovery period necessary, including abstinence and therapy, was one year. Tr. at 149. In this regard, he indicated that the one-year period is significant because it allows a recovering individual to experience many of the ups and downs of the normal yearly cycle, including holidays, life-style issues, and unanticipated stresses. Tr. at 150. He believed that the indicators for whether this individual would maintain his adherence to the program were very positive. Tr. at 153. The consultant psychologist stated that the individual was a "very good bet for a good prognosis." Tr. at 154. He nevertheless subscribed to a one-year minimum abstinence and recovery period. *Id.*

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type

of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing* (VSO-0005), 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

As noted above, the individual in this case does not dispute the DOE consultant psychologist's diagnosis of alcohol dependence. The issue in this case is therefore whether the individual has demonstrated that he is reformed and/or rehabilitated from this condition. As discussed below, I find that the individual has brought forward significant mitigating information, but he is not reformed/rehabilitated at this time.

As an initial matter, I am convinced that, as he testified, the individual has been abstinent from alcohol since March 2007. All of the individual character witnesses corroborated the individual's testimony that he has been abstinent since that time. These witnesses were all highly credible. They were all very familiar with the individual and his personal life and met with him on a regular basis. They all knew about his use of alcohol prior to March 2007, and were well aware of his commitment to abstinence. They all believed that the individual intends to remain abstinent.

I was also very impressed by the individual's commitment to his abstinent life-style for the future. He testified persuasively about why he intends to remain abstinent. He stated that he feels better about himself and feels that overall he is better off than he was prior to March 2007, when he began his recovery program. Tr. at 112. In this regard, the individual was very positive about how he deals with stress in his life and the support system he has in place to cope with stress.

I am also persuaded about the individual's genuine commitment to his rehabilitation program, including his participation in AA and his work with this therapist. The individual's AA sponsor corroborated that the individual is serious about his work in the AA program and in completing the AA steps.

The individual's therapist, the DOE consultant psychologist and the site psychologist were also very impressed with the individual's progress. They were convinced that he is seriously committed to his abstinent life style and gave him a very good prognosis. Thus, all the signs at this point are very much in his favor.

However, all three experts agreed that it is still somewhat early to conclude that the individual is reformed/rehabilitated from his alcohol dependence. The two psychologists testified strongly that one year of abstinence is the minimum necessary before the individual can be considered rehabilitated. The DOE consultant psychologist gave an especially cogent reason for this minimum time frame: the one-year abstinence period allows an affected individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. The individual's therapist wavered somewhat on this point, although ultimately she, too, testified that the one-year abstinence period is appropriate in this case. Having finished only about nine months of abstinence as of the time of the hearing, the individual in this case has not finished this aspect of his rehabilitation.

V. CONCLUSION

As the foregoing indicates, the individual has not resolved the Criterion J security concerns cited in the Notification Letter. It is therefore my decision that restoring the individual's access authorization is not appropriate at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: February 5, 2008